IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

W.P(C).No. 35174 of 2007(K)

PETITIONER:

JOHNY CHANDY,
CHANDY BHAVAN, ANCHANGADY, TRICHUR-680 005.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:

1. **THE REGISTRAR OF COMPANIES,**
   KERALA, COMPANY LAW BHAVAN, BMC ROAD,
   THRIKKAKARA, COCHIN-682 021.

2. **THE CATHOLIC SYRIAN BANK LTD.,**
   CATHOLIC SYRIAN BANK BHAVAN, P.O.BOX NO.502,
   ST.MARY'S COLLEGE ROAD, TRICHUR-680 020.

3. **AIF CAPITAL DEVELOPMENT LIMITED,**
   10, FR'CRE FELIX DE VALOIS STREET, PORT LOUIS,
   MAURITIUS.

4. **GPE III MAURITIUS DIRECT INVESTMENT**
   LTD., 608, ST.JAMES COURT, ST.DENI'S STREET,
   PORT LOUIS, MAURITIUS.

5. **SIGULER GUFF BRIC MAURITIUS,**
   C/O. CITCO (MAURITIUS) LTD., 5TH FLOOR,
   ONE CATHEDRAL SQUARE, JULES KOCING STREET,
   PORT LOUIS, MAURITIUS.

BY ADV. SRI.MANOJ RAMASWAMY, ADDL. CGSC
SRI.P.SANTHALINGAM, SC FOR R1, ASST. SG
SRI.RAJESH. K.RAJU
SRI.S.SHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P. (C) No. 35174 OF 2007 - K

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Dated this the 10th December, 2007

J U D G M E N T

The prayer sought for in this writ petition is to quash Ext. P8 order passed by the 1st respondent.

2. The petitioner is one of the shareholders of the 2nd respondent, a company incorporated under the provisions of the Companies Act, 1956. In relation to the resolution increasing the share capital passed at the annual general meeting held on 30-6-2006, petitioner submits that he had filed an investor complaint before the SEBI. According to him, the complaint was forwarded to the 1st respondent for necessary action. Thereupon notice was issued by the 1st respondent the bank filed Ext. P4 objection and the petitioner submitted his reply.

3. As orders were not passed, petitioner approached this Court and filed W.P.(C) No. 28419/07 which was disposed of by Ext. P7 judgment. By Ext. P7 judgment the 1st respondent was directed to take a decision on the complaint of the petitioner. It is stated

that in pursuance thereof final orders were passed by the 1st respondent and that is produced as Ext. P8. In Ext. P8, the 1st respondent found that the company has not violated the requirements of the Unlisted Public Companies (Preferential Allotment) Rules, 2003. It is also found that the petitioner and others are agitating the very same issue before the Company Law Board and that the 1st respondent cannot be expected to pass an order on a matter which is pending consideration of the Company Law Board. In the process the 1st respondent has also taken note of the Company Law Board's order permitting the 2nd respondent Bank to act upon the impugned resolution passed at the Annual General Meeting held on 30-6-2006.

4. Impugning Ext. P8 order, the learned senior counsel for the petitioner submits that the finding of the 1st respondent that the petitioner has concealed the pendency of the proceeding before the Company Law Board is incorrect. It is also stated that though the issue including the one which is the subject matter of Ext. P3 complaint is being agitated before the Company Law Board, the 1st respondent ought to have decided the matter on merits.

5. On the other hand, the Learned Counsel for the respondent Bank who appeared on notice submits that the the petitioner is none other than 1st petitioner before the Company Law Board in C.P. No. 36/06. It is stated that on these very allegations the Company Law Board had passed interim order restraining the 2nd respondent from proceeding with the resolution taken on 30.6.2006. It is stated that after hearing the parties the Company Law Board has passed Ext. P9 order. In sum and substance the contention is that the issue is pending with the Company Law Board and therefore it is for the Company Law Board to decide that issue.

6. A reading of Ext. P8 itself discloses that this is one of the issues that is agitated by the petitioner himself along with others in C.P. No. 36/06 before the Company Law Board. It is seen that the Company Law Board also has passed the order permitting the Bank to implement the decision. If that be so, it necessarily means that the Company Law Board is considering the correctness or otherwise of the disclosures made by the Company in the notice calling the AGM, in the petition filed by the petitioner and others under Sections 397 and 398 of the Companies Act, 1956. Once the

Company Law Board is seized of the matter and is competent to decide the issue there is no justification for a parallel proceeding before the 1st respondent.

7. It is contended by the petitioner that the scope of the proceedings before the Company Law Board and the 1st respondent are different. I cannot agree with the contention. In both proceedings, the issue is regarding the legality of the resolution passed at the Annual General Meeting of 30.06.2006. The validity of this resolution being one of the issues now agitated before the Company Law Board, it is open to the petitioner to urge all his contentions before the Company Law Board and I am sure that the Company Law Board will decide the issue untrammelled by the findings in Ext. P8.

The writ petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-